

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Millennium Digital Media Systems, L.L.C.	)	File No. EB-02-TS-232
	)	
Operator of Cable Systems in:	)	
	)	
Union City, Michigan	)	
Echo Lake, Washington	)	
Forks, Washington	)	
Lake Roesinger, Washington	)	
	)	
Request for Waiver of Section 11.11(a) of the	)	
Commission's Rules	)	

**ORDER**

**Adopted: January 13, 2004**

**Released: January 15, 2004**

By the Director, Office of Homeland Security, Enforcement Bureau:

1. In this *Order*, we grant the request of Millennium Digital Media Systems, L.L.C. ("Millennium") to extend the temporary, 12-month waivers of Section 11.11(a) of the Commission's Rules ("Rules") previously granted for the four above-captioned cable television systems.<sup>1</sup> Section 11.11(a) requires cable systems serving fewer than 5,000 subscribers from a headend to either provide national level Emergency Alert System ("EAS") messages on all programmed channels or install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel by October 1, 2002.<sup>2</sup>

2. The Cable Act of 1992 added new Section 624(g) to the Communications Act of 1934 ("Act"), which requires that cable systems be capable of providing EAS alerts to their subscribers.<sup>3</sup> In 1994, the Commission adopted rules requiring cable systems to participate in EAS.<sup>4</sup> In 1997, the

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<sup>1</sup> *Millennium Digital Media Systems, L.L.C.*, 17 FCC Rcd 19434 (Enf. Bur., Tech. & Pub. Safety Div., 2002) ("*Waiver Order*").

<sup>2</sup> 47 C.F.R. § 11.11(a).

<sup>3</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 16(b), 106 Stat. 1460, 1490 (1992). Section 624(g) provides that "each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations ...." 47 U.S.C. § 544(g).

<sup>4</sup> *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rule Making*, FO Docket Nos. 91-171/91-301, 10 FCC Rcd 1786

Commission amended the EAS rules to provide financial relief for small cable systems.<sup>5</sup> The Commission declined to exempt small cable systems from the EAS requirements, concluding that such an exemption would be inconsistent with the statutory mandate of Section 624(g).<sup>6</sup> However, the Commission extended the deadline for cable systems serving fewer than 10,000 subscribers to begin complying with the EAS rules to October 1, 2002, and provided cable systems serving fewer than 5,000 subscribers the option of either providing national level EAS messages on all programmed channels or installing EAS equipment and providing a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel.<sup>7</sup> In addition, the Commission stated that it would grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship.

3. On May 23, 2002, Millennium filed a request for temporary, 36 month waivers of Section 11.11(a) of the Rules for 32 small rural cable systems operating in the states of Idaho, Michigan, Oregon and Washington. In its waiver request, Millennium stated that six of the cable systems served between 1,071 and 1603 subscribers and 26 of the cable systems served between 37 and 976 subscribers. In support of its waiver request, Millennium estimated that it would cost a total of \$320,000 to install EAS equipment at the 32 cable systems. Millennium asserted that the cost to install EAS equipment at each of the cable systems would impose a substantial financial hardship on it. On October 10, 2002, we granted Millennium temporary, 36-month waivers for 26 cable television systems and temporary, 12-month waivers of Section 11.11(a) for six cable systems.<sup>8</sup> We concluded that the financial data and other information submitted by Millennium did not justify a waiver period of longer duration for the six cable systems which included the four captioned cable systems.

4. On September 30, 2003, Millennium filed a request for temporary extensions to the 12-month waivers granted in the *Waiver Order* for the four captioned cable systems. Specifically, Millennium requests 24-month waiver extensions for the Forks and Union City cable systems and 12-month waiver extensions for the Echo Lake and Lake Roesinger systems. Millennium states that the extensions of the existing waivers are warranted due to its continuing financial hardship and its significant loss of customers over year 2002. Millennium asserts that the four cable systems lost from nine to 21 percent of their subscribers. Millennium also submits updated financial data for these cable systems.

5. Based on the additional financial data submitted by Millennium, we conclude that extensions of the temporary, 12-month waivers of Section 11.11(a) of the Rules granted to Millennium for the four cable systems are warranted.<sup>9</sup> Nevertheless, we remind Millennium that the Commission has

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(1994), *reconsideration granted in part, denied in part*, 10 FCC Rcd 11494 (1995).

<sup>5</sup> *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Second Report and Order*, FO Docket Nos. 91-171/91-301, 12 FCC Rcd 15503 (1997).

<sup>6</sup> *Id.* at 15512-13.

<sup>7</sup> *Id.* at 15516-15518.

<sup>8</sup> 17 FCC Rcd at 19434.

<sup>9</sup> The 12-month temporary waivers will extend from October 1, 2003, until October 1, 2004 and the 24-month temporary waivers will extend from October 1, 2003, until October 1, 2005. We clarify that the waivers we are granting also encompass the EAS testing and monitoring requirements.

authorized cable systems serving fewer than 5,000 subscribers to install FCC certified decoder-only units, rather than both encoders and decoders.<sup>10</sup> Such decoder-only units are available at a substantially lower cost.<sup>11</sup>

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b), 0.311 of the Rules,<sup>12</sup> Millennium Digital Media Systems, L.L.C. **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2004 for the Echo Lake and Lake Roesinger, Washington cable television systems and **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2005 for the Union City, Michigan and Forks, Washington cable television systems.

7. **IT IS FURTHER ORDERED** that Millennium Digital Media Systems, L.L.C. place a copy of this waiver extension in its system files.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Millennium Digital Media Systems, L.L.C., Christopher C. Cinnamon, Esq., Cinnamon Mueller, 307 North Michigan Avenue, Suite 1020, Chicago, Illinois 60601.

FEDERAL COMMUNICATIONS COMMISSION

James A. Dailey  
Director, Office of Homeland Security  
Enforcement Bureau

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<sup>10</sup> *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System, Report and Order*, EB Docket No. 01-66, 17 FCC Rcd 4055 (2002).

<sup>11</sup> Three manufacturers have received equipment certifications from the Commission for decoder-only units. See [www.fcc.gov/eb/eas/certs.html](http://www.fcc.gov/eb/eas/certs.html). See also *Public Notice*, Notice Regarding FCC Certification of EAS Decoder, DA 02-2312 (September 19, 2002). EAS decoders have been advertised at a cost of approximately \$2,000.

<sup>12</sup> 47 C.F.R. §§ 0.111, 0.204(b), 0.311.